

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
	:	No. 00-0361
Petition for Approval of a Revised Decom-	:	
missioning Expense Adjustment Rider.	:	

ILLINOIS INDUSTRIAL ENERGY CONSUMERS' BRIEF ON EXCEPTIONS

COMES NOW the Illinois Industrial Energy Consumers (IIEC), by its attorneys, Lueders, Robertson & Konzen, and for its Brief on Exceptions to the Hearing Examiners' Proposed Order (Proposed Order) dated October 25, 2000, provides the following discussion and proposed modifications.

Discussion

IIEC is in full agreement with the Hearing Examiners' conclusion that, as a matter of law, Commonwealth Edison Company's (ComEd) Petition must be rejected. The Hearing Examiners have adequately explained ComEd's argument in support for its legal positions, and have adequately described IIEC and other Intervenor's legal arguments in opposition thereto. Finally, IIEC agrees with the "Commission's Analysis" insofar as the legal analysis correctly focuses on the plain and ordinary readings of Sections 9-201.5 and 16-114 (220 ILCS 5/9-201.5 and 5/16-114) in rejecting the ComEd Petition. As these statutes are unambiguous, there is no need to resort to other statutory aids of construction.

IIEC is of the view, however, the description of the "Intervenor's Positions", at page 7 of the Proposed Order, fails to refer to IIEC witness Robert Stephens' arguments challenging ComEd's requested level of decommissioning, and the claim Exelon Genco (Genco) would be able to fund the

decommissioning on its own without subsidization from ComEd ratepayers and customers. IIEC maintains that aside from the legal deficiencies in the ComEd Petition, the Illinois Commerce Commission (Commission) has an additional reason and justification to deny the Petition. That is, assuming *arguendo* it was legally permissible to recover decommissioning funds from ComEd ratepayers and customers in the event of the transfer of the nuclear units to Genco, the Commission would need to try to ascertain the need by Genco for addition funding. Taking into consideration differences between Genco and ComEd in terms of costs and profitability, the evidence in the record substantiates the potential profitability of Genco will be more than sufficient for it to fund the decommissioning.

IIEC does not believe all intervenor witnesses' testimony and evidence pertaining to the level of decommissioning expenses needs to be fully developed in the Proposed Order, insofar as the legal threshold question has been properly resolved. Nevertheless, the Proposed Order should reflect in a brief description, IIEC's positions in this regard for purposes of completeness and also to ensure the Commission is properly informed as to various arguments that were made. Additionally, as stated, IIEC maintains the potential profitability of Genco to fund the decommissioning of the nuclear units is another important reason to reject ComEd's requested relief.

Specifically, IIEC witness Stephens testified that ComEd's \$121 million cost of service does not include savings from either license renewal or delays in decommissioning of any of the units, as well as elimination of site restoration or "greenfielding" costs. Mr. Stephens made a proposed adjustment, representing potential savings from both license renewal and delays in decommissioning.¹

¹ The amount of the adjustment is based on documents deemed confidential by ComEd. The figure is shown on page 11 of the proprietary version of Mr. Stephens' testimony, IIEC Exhibit 1 IP.

Mr. Stephens also made a proposed adjustment of \$20 million per year, reflecting elimination of site restoration costs. (IIEC Ex. 1 at 9).

Mr. Stephens also testified at length, as to the anticipated profitability of Genco, such that even if the Genco was required to contribute the full \$121 million per year of its own revenue to decommissioning, the return on its initial investment would still remain significant. (IIEC Ex. 1P at 14). IIEC explained at length its proposition that Genco should be able to fund contributions to the decommissioning trust funds from its own business operations. (IIEC Initial Br. at 32-35). IIEC estimates the potential return on Genco's initial estimate, based on estimated market prices and production costs, validates IIEC's position. In the end, there is every reason to expect the profitability from operating nuclear units in a deregulated environment will be a profitable enterprise for Genco.

Proposed Modifications

Based on the foregoing, IIEC recommends modifying "C. Intervenor Positions" at page 7, as follows:

"Coalition witness Bodmer and other intervenor witnesses testified that ComEd and the Genco would reap the benefits of any increased efficiencies that result from the Unicom-PECO merger or from any developments of new decommissioning technology and would receive a "windfall" because of the inclusion of a contingency factor in the estimates relied on by ComEd. Intervenor witnesses also testified that the anticipated profitability of the Genco would be more than sufficient to fund the decommissioning of the nuclear units. (Coalition Ex. 1 (Bodmer Direct) at 8, 14, 19-20; AG Ex. 1 (Effron Direct) at 9-13; CUB DT Ex. 1.1 (Biewald Direct) at 3-4, 11-12; IIEC Ex. 1P (Stephens Direct) at 13-14. Intervenor assumed that 1) decommissioning costs would be reduced if ComEd received license extensions for its plants for an additional twenty years or delayed dismantlement of the plants,) investment earnings on the decommissioning trust fund would exceed the escalation rate of

increases in decommissioning costs throughout this period and, on this basis, argued no additional funds should be collected from ratepayers, and 3) site restoration or “greenfielding costs should be removed. Intervenor also claimed that any unexpected increases in the cost of decommissioning would be accounted for by the contingency factor in TLG’s decommissioning estimate.”

“In particular, as briefly noted above, IIEC argued and presented evidence to the effect the Genco would be able to realize a sufficient return on its investment such that it should be able to pay into its decommissioning trust funds and remain profitable. IIEC witness Stephens took into consideration the market price the Genco could expect to attain for its output in relation to its cost of production. Mr. Stephens estimated the difference between the nuclear production cost and assumed market prices and concluded that the net margin, including taxes, would generate such an amount that would provide Genco a significant return on the initial investment even if it had to contribute the full \$121 million per year into its own funds. (IIEC Ex. 1P at 13-14; IIEC Initial Br. at 32-35).”

Respectfully submitted,

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November 1, 2000

TO: Service List in Dkt. 00-0361

Re: Commonwealth Edison Company
Docket No. 00-0361

Gentlemen:

Enclosed please find Illinois Industrial Energy Consumer's Brief on Exceptions. This Brief on Exceptions has been filed electronically with the Clerk of the Illinois Commerce Commission this date.

Sincerely,

Edward C. Fitzhenry, Jr.

ECF/alc

cc: Service List

Enclosure/28894

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
	:	NO. 00-0361
Petition for Approval of a Revision to Decommissioning	:	
Expense Adjustment Rider to Take Effect on Transfer	:	
of ComEd's generating stations.	:	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on this 1st day of November, 2000, we have electronically filed with the Illinois Commerce Commission, Illinois Industrial Energy Consumers' Brief on Exceptions, along with Proof of Service thereon attached.

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PROOF OF SERVICE

STATE OF ILLINOIS)
) SS
COUNTY OF MADISON)

I, Edward C. Fitzhenry, being an attorney admitted to practice in the State of Illinois and one of the attorneys for Illinois Industrial Energy Consumers herewith certify that I did on the 1st day of November, 2000, electronically file with the Illinois Commerce Commission IIEC's Brief on Exceptions, and serve upon the persons identified on the attached service list, both electronically and by depositing same in the United States Mail, in Granite City, Illinois with postage fully prepaid thereon.

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SUBSCRIBED AND SWORN to me, a Notary Public, on this _____ day of _____,
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